

IFW



Attorney's Docket No.: 10527-410002 / 01-486 (CON)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Verivada Chandrasekaran et al. Art Unit : 3738
Serial No. : 10/629,934 Examiner : Suzette Jackson
Filed : July 29, 2003
Title : MEDICAL DEVICE WITH RADIOPACITY

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO ACTION OF APRIL 1, 2004

In reply to the Office Action of April 1, 2004, Applicants submit the following remarks.

Claims 1, 2, and 4-12 are pending. The independent claims are claims 1 and 12.

Claims 1, 2, 4-10, and 12 have been rejected under 35 U.S.C. §102 as anticipated by U.S. Pat. No. 6,174,329 issued to Callol (hereinafter referred to as ("Callol")). But Callol does not disclose or suggest a member having a portion that includes "a first layer including a radiopaque material; and a second layer defining an outer surface of the member and including the radiopaque material and a second material," as claimed.

Callol discloses a radiolucent stent that is coated with a radiopaque layer and a protective layer. *See, e.g.,* Callol, col. 4, lines 52-54; *see also, e.g.,* FIGS. 3 and 6. The radiopaque layer can be constructed from various different radiopaque materials. *See, e.g.,* Callol, col. 5, lines 55-60. The protective layer coats both the stent and the radiopaque layer. *See, e.g.,* Callol, FIGS. 3 and 6. The protective layer can be formed of a polymeric coating, a metallic coating, or a ceramic coating. Titanium and tantalum are examples of suitable metals with which to form the metallic coatings. *See, e.g.,* Callol, col. 6, lines 35-36. But the material from which Callol's

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

June 15, 2004

Date of Deposit

Signature Roselynn Scarfo

Roselynn Scarfo

Typed or Printed Name of Person Signing Certificate

protective layer is constructed does not include any of the radiopaque material that forms the radiopaque layer.

Callol also discloses a radiolucent stent coated with a protective layer that includes radiopaque agents. *See, e.g.*, Callol, col. 6, lines 46-51; *see also, e.g.*, FIG. 7. The protective layer is used as a substitute for, rather than a supplement to, the radiopaque layer. *See, e.g.*, Callol, col. 2, lines 23-25 (“In one embodiment of the invention, the radiopaque layer can be eliminated by incorporating a radiopaque material, such as barium or titanium oxide in the protective layer.”). Thus, in this embodiment, the stent does not have a first layer including a radiopaque layer, as claimed.

In the Office Action, the Examiner appears to have taken the position that Callol discloses a stent having a radiopaque layer formed of tantalum and a protective layer formed of an alloy of titanium and tantalum. However, there is no indication in Callol that the protective layer is formed of titanium-tantalum alloy.

As noted in the Office Action, at col. 6, lines 35-36, Callol describes the protective layer as “a metallic coating (i.e., titanium and tantalum)” that can be applied using various techniques. It does not follow from this phrase that the metallic coating referred to is an alloy of titanium and tantalum. In fact, earlier in the same paragraph, Callol explains that “a polymeric layer (i.e., Parylene, polycarbonateurethane copolymer, silicone rubber, hydrogels, polyvinyl alcohol, polyvinyl acetate, polycaprolactone, urethanes, PHEMA-acrylic, etc.)” can be applied using various techniques. Callol, col. 6, lines 27-35. Similarly, Callol explains that “a ceramic coating (i.e., zirconium nitrite, pyrolytic carbon, graphite, Nedox, and titanium nitrite)” can be applied using various techniques. Callol, col. 6, lines 39-44. Just as it would be improper to conclude that the polymeric layer and the ceramic coating described above include each of the above-listed materials, it would be improper to conclude that Callol’s metallic coating includes both titanium and tantalum. The more consistent, and thus more appropriate, interpretation is that Callol’s metallic coating can include one of titanium and tantalum.

Therefore, Callol fails to disclose or suggest all of Applicant’s claimed features.

Applicant : Verivada Chandrasekaran et al.
Serial No. : 10/629,934
Filed : July 29, 2003
Page : 3 of 3

Attorney's Docket No.: 10527-410002 / 01-486 (CON)

For at least the reasons discussed above, Applicant respectfully requests the allowance of the above-referenced claims.

Dependent claim 11 has been rejected under 35 U.S.C. §103 as being unpatentable over Callol in view of U.S. Pat. App. Pub. No. 2004/0054399. For at least the reasons discussed above, Applicant requests the allowance of this claim.

No fees are believed to be due at this time, however, please apply any charges, or any credits, to deposit account 06-1050.

Respectfully submitted,

Date: June 15, 2004



Michael R. Hamlin
Reg. No. 54,149

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906